

G. RICHARD GREEN, State Bar No. 61335
GREEN & MARKER
1875 Century Park East, Suite 1495
Los Angeles, California 90067
Telephone: 310/201-0406
Facsimile: 310/201-0461
Email: grgreen13@gmail.com

Attorneys for Plaintiff

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO (NORTH REGIONAL DISTRICT - VISTA)

BRENDA MARKSTEIN, an individual as
Trustee of the BRENDA MARKSTEIN
LIVING TRUST,

Plaintiff,
vs.

HICALIBER HORSE RESCUE, INC., a
California corporation, MICHELLE
KNUTILLA, an individual, also known as
MICHELLE COCHRAN, ROMNEY
SNYDER, an individual and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2018-00059874-CU-BC-NC
Hon.

COMPLAINT FOR DAMAGES FOR:

1. Breach of Contract
2. Trespass to Real Property
3. Negligence

Plaintiff alleges:

FIRST CAUSE OF ACTION

(Breach of Lease Against All Defendants)

1. Plaintiff Brenda Markstein ("Markstein" or "Plaintiff" used interchangeably) is, and at all relevant times mentioned herein was, an individual and the Trustee of the Brenda Markstein Living Trust, the owner of that certain real property commonly known as 11223 Calle Oro Verde, Valley Center, California 92082 (the "Property") in San Diego County and located in the within Judicial District.

2. HiCaliber Horse Rescue, Inc. (hereinafter "HiCaliber" or "Defendant" used interchangeably) is, and at all relevant times mentioned herein was, a California corporation and doing business in San Diego County and in the within Judicial District.

3. Plaintiff is informed and believes, and based thereon allege, that defendant Michelle Knutilla, also known as Michelle Cochran (hereinafter "Knutilla" or "Defendant," used interchangeably) is, and at all relevant times mentioned herein was, an individual who resides in San Diego County, California.

4. Plaintiff is informed and believes, and based thereon allege, that defendant Romney Snyder (hereinafter "Snyder" or "Defendant," used interchangeably) is and at all relevant times mentioned herein was, an individual who resides in San Diego County, California.

5. Plaintiff does not know the true names or capacities of the fictitiously named defendants DOES 1 through 50, inclusive, and therefore sue these defendants by their fictitious names. Plaintiff will amend this Complaint to allege their true names or capacities when they have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named defendant is in some manner responsible for the acts, omissions or conduct alleged in this Complaint and that such defendants proximately caused Plaintiff's damages, as alleged herein.

6. Plaintiff alleges on information and belief that, except as otherwise alleged herein, each of the defendants are and at all relevant times were the agent, employer, partner, joint venturer, aider and abettor, alter ego, and/or affiliate of each of the other defendants and, in doing the things alleged herein, were acting within the course and scope of such positions at the direction of and/or with the permission, knowledge, consent and/or ratification of each of the other defendants.

7. Plaintiff is informed and believes and based upon such information and belief alleges that there exists, and at all times mentioned herein existed, a unity of interest and ownership between Knutilla and Snyder and Does 1 through 50 on the one hand, and HiCaliber on the other hand, such that any individuality and separateness between Knutilla/Snyder/Does and HiCaliber have ceased and HiCaliber is the alter ego of Knutilla and Snyder and Does 1 through

1 50, inclusive, according to proof at time of trial.

2 8. The written contract, the Lease Agreement (hereinafter "Lease") sued upon herein
3 was made and performed in the County of San Diego, State of California in the within Judicial
4 District.

5 9. The subject of the Lease between the parties concerns the Property.

6 10. Plaintiff as landlord leased, rented and demised to Defendants the Property for a
7 one year term commencing on September 1, 2014 and ending on September 30, 2015. A true and
8 correct copy of the Lease is attached hereto as Exhibit "A" and incorporated herein as if set forth
9 in full by this reference.

10 11. Defendants took possession of the Property pursuant to the terms of the Lease on or
11 about September 1, 2014.

12 12. Defendants were to pay to Plaintiff pursuant to the terms of the Lease as and for
13 rent the sum of \$6,000 as basic monthly rent on the first day of each successive month.
14 Defendants were also to pay the sum of \$500 per month for the use of Plaintiff's tractor.

15 13. Defendants have continued in possession of the Property under the terms of the
16 Lease on a month to month basis since September 30, 2015 the date the Lease ended.

17 13. On or about July 10, 2017 and continuing thereafter, the Defendants breached the
18 Lease by failing to pay rent, then due in accordance with the terms of the Lease and have failed to
19 pay such rent for July, August, September, October and November 2018 in an amount of \$30,000
20 which remains due, owing and unpaid for rent for the Property.

21 14. On or about July 10, 2017 and continuing thereafter, the Defendants breached the
22 Lease by failing to pay rent for the tractor, then due in accordance with the terms of the Lease and
23 have failed to pay such rent for July, August, September, October and November 2018 in an
24 amount of \$2,500 which remains due, owing and unpaid for rent for the tractor.

25 15. Defendant further breached the Lease by damaging the Property in an abusive,
26 vexatious manner including irreparable damage to residential structures, farmlands, barns and
27 ranch buildings, pens, stalls, landscaping, trees, drainage, and otherwise, according to proof at trial
28 an in a sum according to proof at trial but no less than two million dollars (\$2,000,000).

16. Plaintiff has incurred damages as the direct result of Defendants breach of Lease in the sum of no less than \$2,032,500, or according to proof at time of trial.

17. Plaintiff has performed all conditions on her part to perform under the terms of the Lease.

18. Plaintiff has sought Mediation with Defendants under the terms of the Lease in a written demand for same and which has gone unanswered. By this Complaint Plaintiff again invites and demands Mediation pursuant to paragraph 39 et seq of the Lease.

19. Plaintiff has been required to retain counsel for these proceedings and for which legal fees Plaintiff is entitled under paragraph 40 of the Lease in a sum according to proof at time of trial.

SECOND CAUSE OF ACTION

(Trespass to Real Property Against All Defendants)

20. Plaintiff realleges and incorporates by this reference paragraphs 1 through 19, inclusive, as if set forth in full herein.

21. Defendants, without Plaintiff's permission or consent, maliciously and abusively destroyed portions of Plaintiff's Property as alleged herein.

22. The destruction of Plaintiff's Property by Defendants materially interfered with Plaintiff's right to possession of the Property in its original condition.

23. Plaintiff has suffered the loss of no less than \$2,000,000 in damage to the Property and according to proof at time of trial.

24. Plaintiff has further suffered diminution in the value of the Property in the additional sum of no less than \$2,000,000 and according to proof at time of trial.

25. Plaintiff has suffered the loss of rental monies as the proximate results of Defendants wrongful and vexatious treatment of the Property in an amount according to proof at time of trial.

26. The aforementioned acts of the Defendants were willful and malicious and in wanton disregard of Plaintiff's rights in that Defendants were aware of Plaintiff's ownership and possessory interests in the Property yet knowingly disregarded Plaintiff's rights therein when

1 destroying and damaging the Property as alleged herein. The aforementioned acts were thus done
2 with a willingness on the part of Defendants to vex, harass, or injure Plaintiff. Plaintiff therefore
3 seeks exemplary and punitive damages from Defendants according to proof at time of trial.

4 **THIRD CAUSE OF ACTION**

5 **(Negligence Against All Defendants)**

6 27. Plaintiff realleges and incorporates by this reference paragraphs 1 through 26.,
7 inclusive, as if set forth in full herein.

8 28. Defendants as the tenants of the Property and in possession, custody, control and
9 management of said Property, had the duty to care for and maintain the Property to prevent
10 damage or diminution in value beyond normal wear and tear and the responsibility of returning the
11 Property to Plaintiff in reasonably good and original condition.

12 29. Defendants breached that duty by returning the Property to the Plaintiff damaged
13 and destroyed well beyond reasonable wear and tear, thereby causing damages to Plaintiff for the
14 disrepair and destruction of the Property, diminution in value and further damages according to
15 proof at time of trial, all of which was proximately caused by Defendants as alleged herein.

16 30. Plaintiff has sustained monetary damages as the actual and proximate cause of
17 Defendants actions, conduct, negligence, breach of duty and acts in an amount to be determined
18 according to proof at trial, but in no event less than \$4,000,000.

19 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as follows:

- 20 1. For damages in an amount to be shown according to proof at trial, but not less
21 than \$4,000,000;
22 2. For punitive and exemplary damages;
23 3. For reasonable attorneys' fees and costs as allowed by law;

24 //

25 //

26 //

27 //

28

4. For costs of suit herein; and
5. For such other and further relief as the Court deems proper.

DATED: November 26, 2018

GREEN & MARKER

By: 

G. Richard Green
Attorneys for Plaintiff
Brenda Markstein, Trustee of the Brenda
Markstein Living Trust

EXHIBIT "A"



CALIFORNIA
ASSOCIATION
OF REALTORS®

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT

(C.A.R. Form LR, Revised 12/13)

Date 08/19/2014

BRENDA MARKSTEIN LIVING TRUST

HICALIBER HORSE RESCUE INC., a California Corporation

("Landlord") and

("Tenant") agree as follows:

1. PROPERTY:

- A. Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: 11223 Calle Oro Verde, Valley Center, CA 92082 ("Premises").
- B. The Premises are for the sole use as a personal residence by the following named person(s) only: _____
- C. The following personal property, maintained pursuant to paragraph 11, is included: Furnishings contained within the premises. Tractor or ☐ (if checked) the personal property on the attached addendum.
- D. The Premises may be subject to a local rent control ordinance _____

2. TERM:

- The term begins on (date) September 1, 2014 ("Commencement Date"). (Check A or B):
- ☐ A. Month-to-Month: and continues as a month-to-month tenancy. Tenant may terminate the tenancy by giving written notice at least 30 days prior to the intended termination date. Landlord may terminate the tenancy by giving written notice as provided by law. Such notices may be given on any date.
- ☒ B. Lease: and shall terminate on (date) September 30, 2014 at 11:59 ☐ AM/ ☒ PM. Tenant shall vacate the Premises upon termination of the Agreement, unless: (i) Landlord and Tenant have extended this Agreement in writing or signed a new agreement; (ii) mandated by local rent control law; or (iii) Landlord accepts Rent from Tenant (other than past due Rent), in which case a month-to-month tenancy shall be created which either party may terminate as specified in paragraph 2A. Rent shall be at a rate agreed to by Landlord and Tenant, or as allowed by law. All other terms and conditions of this Agreement shall remain in full force and effect.

3. RENT:

- "Rent" shall mean all monetary obligations of Tenant to Landlord under the terms of the Agreement, except security deposit.
- A. Tenant agrees to pay \$ 4,500.00 per month for the term of the Agreement.
- B. Rent is payable in advance on the 1st (or ☐) day of each calendar month, and is delinquent on the next day.
- C. If Commencement Date falls on any day other than the day Rent is payable under paragraph 3B, and Tenant has paid one full month's Rent in advance of Commencement Date, Rent for the second calendar month shall be prorated and Tenant shall pay 1/30th of the monthly rent per day for each day remaining in prorated second month.
- D. PAYMENT: Rent shall be paid by ☒ personal check, ☒ money order, ☒ cashier's check, or ☒ other cash, to (name) Brenda Markstein, at (address) 2702 Circle Drive, Newport Beach, CA 92663 (phone) _____, (or at any other location subsequently specified by Landlord in writing to Tenant) (and ☐ if checked, rent may be paid personally, between the hours of _____ and _____ on the following days _____). If any payment is returned for non-sufficient funds ("NSF") or because tenant stops payment, then, after that: (i) Landlord may, in writing, require Tenant to pay Rent in cash for three months and (ii) all future Rent shall be paid by ☐ money order, or ☐ cashier's check.

4. SECURITY DEPOSIT:

- A. Tenant agrees to pay \$ _____ as a security deposit. Security deposit will be ☐ transferred to and held by the Owner of the Premises, or ☐ held in Owner's Broker's trust account.
- B. All or any portion of the security deposit may be used, as reasonably necessary, to: (i) cure Tenant's default in payment of Rent (which includes Late Charges, NSF fees or other sums due); (ii) repair damage, excluding ordinary wear and tear, caused by Tenant or by a guest or licensee of Tenant; (iii) clean Premises, if necessary, upon termination of the tenancy; and (iv) replace or return personal property or appurtenances. SECURITY DEPOSIT SHALL NOT BE USED BY TENANT IN LIEU OF PAYMENT OF LAST MONTH'S RENT. If all or any portion of the security deposit is used during the tenancy, Tenant agrees to reinstate the total security deposit within five days after written notice is delivered to Tenant. Within 21 days after Tenant vacates the Premises, Landlord shall: (1) furnish Tenant an itemized statement indicating the amount of any security deposit received and the basis for its disposition and supporting documentation as required by California Civil Code § 1950.5(g); and (2) return any remaining portion of the security deposit to Tenant.
- C. Security deposit will not be returned until all Tenants have vacated the Premises and all keys returned. Any security deposit returned by check shall be made out to all Tenants named on this Agreement, or as subsequently modified.
- D. No interest will be paid on security deposit unless required by local law.
- E. If the security deposit is held by Owner, Tenant agrees not to hold Broker responsible for its return. If the security deposit is held in Owner's Broker's trust account, and Broker's authority is terminated before expiration of this Agreement, and security deposit is released to someone other than Tenant, then Broker shall notify Tenant, in writing, where and to whom security deposit has been released. Once Tenant has been provided such notice, Tenant agrees not to hold Broker responsible for the security deposit.

5. MOVE-IN COSTS RECEIVED/DUE: Move-in funds made payable to _____ shall be paid by ☐ personal check, ☐ money order, or ☐ cashier's check.

Category	Total Due	Payment Received	Balance Due	Date Due
Rent from <u>09/01/2014</u> to <u>09/30/2014</u> (date)	\$2,500.00		\$2,500.00	08/29/2014
*Security Deposit				
Other				
Other				
Total	\$2,500.00		\$2,500.00	08/29/2014

*The maximum amount Landlord may receive as security deposit, however designated, cannot exceed two months' Rent for unfurnished premises, or three months' Rent for furnished premises.

Tenant's Initials [Signature]

Landlord's Initials [Signature]
Reviewed by _____ Date 9/1/14

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LR REVISED 12/13 (PAGE 1 OF 6)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 1 OF 6)

Agent: Kristin Connor

Phone: 619.231.1422

Fax: 619.237.0457

Prepared using zipForm® software

Broker: Kimball, Tiley, 1202 Kettner Blvd San Diego, CA 92101



11223 Calle Oro Verde
Premises: Valley Center, CA 92082

Date: August 19, 2014

6. LATE CHARGE; RETURNED CHECKS:

- A. Tenant acknowledges either late payment of Rent or issuance of a returned check may cause Landlord to incur costs and expenses, the exact amounts of which are extremely difficult and impractical to determine. These costs may include, but are not limited to, processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of Rent due from Tenant is not received by Landlord within 5 (or 10) calendar days after the date due, or if a check is returned, Tenant shall pay to Landlord, respectively, an additional sum of \$ _____ or 5.000 % of the Rent due as a Late Charge and \$25.00 as a NSF fee for the first returned check and \$35.00 as a NSF fee for each additional returned check, either or both of which shall be deemed additional Rent.
- B. Landlord and Tenant agree that these charges represent a fair and reasonable estimate of the costs Landlord may incur by reason of Tenant's late or NSF payment. Any Late Charge or NSF fee shall not constitute a waiver as to any default of Tenant. Landlord's right to collect a Late Charge or NSF fee shall not be deemed an extension of the date Rent is due under paragraph 3 or prevent Landlord from exercising any other rights and remedies under this Agreement and as provided by law.

7. PARKING: (Check A or B)

- ☒ A. Parking is permitted as follows: on premises and as legally allowed on the street.

The right to parking ☒ is ☐ is not included in the Rent charged pursuant to paragraph 3. If not included in the Rent, the parking rental fee shall be an additional \$ _____ per month. Parking space(s) are to be used for parking properly licensed and operable motor vehicles, except for trailers, boats, campers, buses or trucks (other than pick-up trucks). Tenant shall park in assigned space(s) only. Parking space(s) are to be kept clean. Vehicles leaking oil, gas or other motor vehicle fluids shall not be parked on the Premises. Mechanical work or storage of inoperable vehicles is not permitted in parking space(s) or elsewhere on the Premises.

OR ☐ B.

8. STORAGE: (Check A or B)

- ☐ A. Storage is permitted as follows:

The right to separate storage space ☐ is, ☐ is not, included in the Rent charged pursuant to paragraph 3. If not included in the Rent, storage space fee shall be an additional \$ _____ per month. Tenant shall store only personal property Tenant owns, and shall not store property claimed by another or in which another has any right, title or interest. Tenant shall not store any improperly packaged food or perishable goods, flammable materials, explosives, hazardous waste or other inherently dangerous material, or illegal substances.

OR ☒ B.

9. UTILITIES: Tenant agrees to pay for all utilities and services, and the following charges:

except _____, which shall be paid for by Landlord. If any utilities are not separately metered, Tenant shall pay Tenant's proportional share, as reasonably determined and directed by Landlord. If utilities are separately metered, Tenant shall place utilities in Tenant's name as of the Commencement Date. Landlord is only responsible for installing and maintaining one usable telephone jack and one telephone line to the Premises. Tenant shall pay any cost for conversion from existing utilities service provider.

10. CONDITION OF PREMISES: Tenant has examined Premises and, if any, all furniture, furnishings, appliances, landscaping and fixtures, including smoke detector(s).

(Check all that apply:)

- ☐ A. Tenant acknowledges these items are clean and in operable condition, with the following exceptions: _____
- ☐ B. Tenant's acknowledgment of the condition of these items is contained in an attached statement of condition (C.A.R. Form MIMO).
- ☐ C. (i) Landlord will Deliver to Tenant a statement of condition (C.A.R. Form MIMO) ☐ within 3 days after execution of this Agreement; ☐ prior to the Commencement Date; ☐ within 3 days after the Commencement Date.
(ii) Tenant shall complete and return the MIMO to Landlord within 3 (or ☐) days after Delivery. Tenant's failure to return the MIMO within that time shall conclusively be deemed Tenant's Acknowledgement of the condition as stated in the MIMO.
- ☒ D. Tenant will provide Landlord a list of items that are damaged or not in operable condition within 3 (or 10) days after Commencement Date, not as a contingency of this Agreement but rather as an acknowledgment of the condition of the Premises.
- ☐ E. Other: _____

11. MAINTENANCE:

- A. Tenant shall properly use, operate and safeguard Premises, including if applicable, any landscaping, furniture, furnishings and appliances, and all mechanical, electrical, gas and plumbing fixtures, and smoke alarms, and keep them and the Premises clean, sanitary and well ventilated. Tenant shall be responsible for checking and maintaining all carbon monoxide detectors and any additional phone lines beyond the one line and jack that Landlord shall provide and maintain. Tenant shall immediately notify Landlord, in writing, of any problem, malfunction or damage with any item on the property. Tenant shall be charged for all repairs or replacements caused by Tenant, pets, guests or licensees of Tenant, excluding ordinary wear and tear. Tenant shall be charged for all damage to Premises as a result of failure to report a problem in a timely manner. Tenant shall be charged for repair of drain blockages or stoppages, unless caused by defective plumbing parts or tree roots invading sewer lines.
- B. ☐ Landlord ☒ Tenant shall water the garden, landscaping, trees and shrubs, except: _____

- C. ☐ Landlord ☒ Tenant shall maintain the garden, landscaping, trees and shrubs, except: _____

- D. ☐ Landlord ☐ Tenant shall maintain _____

- E. Tenant's failure to maintain any item for which Tenant is responsible shall give Landlord the right to hire someone to perform such maintenance and charge Tenant to cover the cost of such maintenance.

- F. The following items of personal property are included in the Premises without warranty and Landlord will not maintain, repair or replace them: _____

Tenant's Initials

Landlord's Initials

LR REVISED 12/13 (PAGE 2 OF 6)

Reviewed by Date 8-19-14

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 2 OF 6)



11223 Calle Oro Verde

11223 Calle Oro Verde
Premises: Valley Center, CA 92082

Date: August 19, 2014

12. **NEIGHBORHOOD CONDITIONS:** Tenant is advised to satisfy him or herself as to neighborhood or area conditions, including schools, proximity and adequacy of law enforcement, crime statistics, proximity of registered felons or offenders, fire protection, other governmental services, availability, adequacy and cost of any wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, cemeteries, facilities and condition of common areas, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Tenant.
13. **PETS:** Unless otherwise provided in California Civil Code § 54.2, no animal or pet shall be kept on or about the Premises without Landlord's prior written consent, except: Pets are allowed. Premises to be primarily horse rescue.
14. ☒ (If checked) **NO SMOKING:** No smoking of any substance is allowed on the Premises or common areas. If smoking does occur on the Premises or common areas, (i) Tenant is responsible for all damage caused by the smoking including, but not limited to stains, burns, odors and removal of debris; (ii) Tenant is in breach of this Agreement; (iii) Tenant, guests, and all others may be required to leave the Premises; and (iv) Tenant acknowledges that in order to remove odor caused by smoking, Landlord may need to replace carpet and drapes and paint the entire premises regardless of when these items were last cleaned, replaced, or repainted. Such actions and other necessary steps will impact the return of any security deposit. The Premises or common areas may be subject to a local non-smoking ordinance.
15. **RULES/REGULATIONS:**
- A. Tenant agrees to comply with all Landlord rules and regulations that are at any time posted on the Premises or delivered to Tenant. Tenant shall not, and shall ensure that guests and licensees of Tenant shall not, disturb, annoy, endanger or interfere with other tenants of the building or neighbors, or use the Premises for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing or transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Premises.
- B. (If applicable, check one)
- ☐ 1. Landlord shall provide Tenant with a copy of the rules and regulations within _____ days or _____
- OR ☐ 2. Tenant has been provided with, and acknowledges receipt of, a copy of the rules and regulations.
16. ☐ (If checked) **CONDOMINIUM; PLANNED UNIT DEVELOPMENT:**
- A. The Premises are a unit in a condominium, planned unit development, common interest subdivision or other development governed by a homeowners' association ("HOA"). The name of the HOA is _____ Tenant agrees to comply with all HOA covenants, conditions and restrictions, bylaws, rules and regulations and decisions ("HOA Rules"). Landlord shall provide Tenant copies of HOA Rules, if any. Tenant shall reimburse Landlord for any fines or charges imposed by HOA or other authorities, due to any violation by Tenant, or the guests or licensees of Tenant.
- B. (Check one)
- ☐ 1. Landlord shall provide Tenant with a copy of the HOA Rules within _____ days or _____
- OR ☐ 2. Tenant has been provided with, and acknowledges receipt of, a copy of the HOA Rules.
17. **ALTERATIONS; REPAIRS:** Unless otherwise specified by law or paragraph 29C, without Landlord's prior written consent, (i) Tenant shall not make any repairs, alterations or improvements in or about the Premises including: painting, wallpapering, adding or changing locks, installing antenna or satellite dish(es), placing signs, displays or exhibits, or using screws, fastening devices, large nails or adhesive materials; (ii) Landlord shall not be responsible for the costs of alterations or repairs made by Tenant; (iii) Tenant shall not deduct from Rent the costs of any repairs, alterations or improvements; and (iv) any deduction made by Tenant shall be considered unpaid Rent.
18. **KEYS; LOCKS:**
- A. Tenant acknowledges receipt of (or Tenant will receive ☒ prior to the Commencement Date, or ☐):
- ☒ 2 key(s) to Premises, ☐ remote control device(s) for garage door/gate opener(s).
- ☐ key(s) to mailbox, ☐ _____
- ☐ key(s) to common area(s), ☐ _____
- B. Tenant acknowledges that locks to the Premises ☐ have, ☒ have not, been re-keyed.
- C. If Tenant re-keys existing locks or opening devices, Tenant shall immediately deliver copies of all keys to Landlord. Tenant shall pay all costs and charges related to loss of any keys or opening devices. Tenant may not remove locks, even if installed by Tenant.
19. **ENTRY:**
- A. Tenant shall make Premises available to Landlord or Landlord's representative for the purpose of entering to make necessary or agreed repairs, (including, but not limited to, installing, repairing, testing, and maintaining smoke detectors and carbon monoxide devices, and bracing, anchoring or strapping water heaters), decorations, alterations, or improvements, or to supply necessary or agreed services, or to show Premises to prospective or actual purchasers, tenants, mortgagees, lenders, appraisers, or contractors.
- B. Landlord and Tenant agree that 24-hour written notice shall be reasonable and sufficient notice, except as follows: (1) 48-hour written notice is required to conduct an inspection of the Premises prior to the Tenant moving out, unless the Tenant waives the right to such notice. (2) If Landlord has in writing informed Tenant that the Premises are for sale and that Tenant will be notified orally to show the premises (C.A.R. Form NSE), then, for the next 120 days following the delivery of the NSE, notice may be given orally to show the Premises to actual or prospective purchasers. (3) No written notice is required if Landlord and Tenant orally agree to an entry for agreed services or repairs if the date and time of entry are within one week of the oral agreement. (4) No notice is required: (i) to enter in case of an emergency; (ii) if the Tenant is present and consents at the time of entry; or (iii) if the Tenant has abandoned or surrendered the Premises.
- C. ☐ (If checked) Tenant authorizes the use of a key safe/lockbox to allow entry into the Premises and agrees to sign a key safe/lockbox addendum (C.A.R. Form KLA).
20. **SIGNS:** Tenant authorizes Landlord to place FOR SALE/LEASE signs on the Premises.
21. **ASSIGNMENT; SUBLETTING:** Tenant shall not sublet all or any part of Premises, or assign or transfer this Agreement or any interest in it, without Landlord's prior written consent. Unless such consent is obtained, any assignment, transfer or subletting of Premises or this Agreement or tenancy, by voluntary act of Tenant, operation of law or otherwise, shall, at the option of Landlord, terminate this Agreement. Any proposed assignee, transferee or sublessee shall submit to Landlord, an application and credit information for Landlord's approval and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one assignment, transfer or sublease, shall not be construed as consent to any subsequent assignment, transfer or sublease and does not release Tenant of Tenant's obligations under this Agreement.

Tenant's Initials ()

Landlord's Initials ()

Reviewed by Date



LR REVISED 12/13 (PAGE 3 OF 6)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 3 OF 6)

11223 Calle Oro Verde
Premises: Valley Center, CA 92082

Date: August 19, 2014

22. **JOINT AND INDIVIDUAL OBLIGATIONS:** If there is more than one Tenant, each one shall be individually and completely responsible for the performance of all obligations of Tenant under this Agreement, jointly with every other Tenant, and individually, whether or not in possession.
23. ☐ **LEAD-BASED PAINT (if checked):** Premises were constructed prior to 1978. In accordance with federal law, Landlord gives and Tenant acknowledges receipt of the disclosures on the attached form (C.A.R. Form FLD) and a federally approved lead pamphlet.
24. ☐ **MILITARY ORDNANCE DISCLOSURE:** (If applicable and known to Landlord) Premises are located within one mile of an area once used for military training, and may contain potentially explosive munitions.
25. ☐ **PERIODIC PEST CONTROL:** Landlord has entered into a contract for periodic pest control treatment of the Premises and shall give Tenant a copy of the notice originally given to Landlord by the pest control company.
26. ☐ **METHAMPHETAMINE CONTAMINATION:** Prior to signing this Agreement, Landlord has given Tenant a notice that a health official has issued an order prohibiting occupancy of the property because of methamphetamine contamination. A copy of the notice and order are attached.
27. **MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Landlord nor Brokers, if any, are required to check this website. If Tenant wants further information, Tenant should obtain information directly from this website.)
28. **POSSESSION:**
- A. Tenant is not in possession of the Premises. If Landlord is unable to deliver possession of Premises on Commencement Date, such Date shall be extended to the date on which possession is made available to Tenant. If Landlord is unable to deliver possession within 5 (or ☐) calendar days after agreed Commencement Date, Tenant may terminate this Agreement by giving written notice to Landlord, and shall be refunded all Rent and security deposit paid. Possession is deemed terminated when Tenant has returned all keys to the Premises to Landlord.
- B. ☐ Tenant is already in possession of the Premises.
29. **TENANT'S OBLIGATIONS UPON VACATING PREMISES:**
- A. Upon termination of this Agreement, Tenant shall: (i) give Landlord all copies of all keys or opening devices to Premises, including any common areas; (ii) vacate and surrender Premises to Landlord, empty of all persons; (iii) vacate any/all parking and/or storage space; (iv) clean and deliver Premises, as specified in paragraph C below, to Landlord in the same condition as referenced in paragraph 10; (v) remove all debris; (vi) give written notice to Landlord of Tenant's forwarding address; and (vii)
- B. All alterations/improvements made by or caused to be made by Tenant, with or without Landlord's consent, become the property of Landlord upon termination. Landlord may charge Tenant for restoration of the Premises to the condition it was in prior to any alterations/improvements.
- C. **Right to Pre-Move-Out Inspection and Repairs:** (i) After giving or receiving notice of termination of a tenancy (C.A.R. Form NRI), or before the end of a lease, Tenant has the right to request that an inspection of the Premises take place prior to termination of the lease or rental (C.A.R. Form NRI). If Tenant requests such an inspection, Tenant shall be given an opportunity to remedy identified deficiencies prior to termination, consistent with the terms of this Agreement. (ii) Any repairs or alterations made to the Premises as a result of this inspection (collectively, "Repairs") shall be made at Tenant's expense. Repairs may be performed by Tenant or through others, who have adequate insurance and licenses and are approved by Landlord. The work shall comply with applicable law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. (iii) Tenant shall: (a) obtain receipts for Repairs performed by others; (b) prepare a written statement indicating the Repairs performed by Tenant and the date of such Repairs; and (c) provide copies of receipts and statements to Landlord prior to termination. Paragraph 29C does not apply when the tenancy is terminated pursuant to California Code of Civil Procedure § 1161(2), (3) or (4).
30. **BREACH OF CONTRACT; EARLY TERMINATION:** In addition to any obligations established by paragraph 29, in the event of termination by Tenant prior to completion of the original term of the Agreement, Tenant shall also be responsible for lost Rent, rental commissions, advertising expenses and painting costs necessary to ready Premises for re-rental. Landlord may withhold any such amounts from Tenant's security deposit.
31. **TEMPORARY RELOCATION:** Subject to local law, Tenant agrees, upon demand of Landlord, to temporarily vacate Premises for a reasonable period, to allow for fumigation (or other methods) to control wood destroying pests or organisms, or other repairs to Premises. Tenant agrees to comply with all instructions and requirements necessary to prepare Premises to accommodate pest control, fumigation or other work, including bagging or storage of food and medicine, and removal of perishables and valuables. Tenant shall only be entitled to a credit of Rent equal to the per diem Rent for the period of time Tenant is required to vacate Premises.
32. **DAMAGE TO PREMISES:** If, by no fault of Tenant, Premises are totally or partially damaged or destroyed by fire, earthquake, accident or other casualty that renders Premises totally or partially uninhabitable, either Landlord or Tenant may terminate this Agreement by giving the other written notice. Rent shall be abated as of the date Premises become totally or partially uninhabitable. The abated amount shall be the current monthly Rent prorated on a 30-day period. If the Agreement is not terminated, Landlord shall promptly repair the damage, and Rent shall be reduced based on the extent to which the damage interferes with Tenant's reasonable use of Premises. If damage occurs as a result of an act of Tenant or Tenant's guests, only Landlord shall have the right of termination, and no reduction in Rent shall be made.
33. **INSURANCE:** Tenant's or guest's personal property and vehicles are not insured by Landlord, manager or, if applicable, HOA, against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Tenant is advised to carry Tenant's own insurance (renter's insurance) to protect Tenant from any such loss or damage. Tenant shall comply with any requirement imposed on Tenant by Landlord's insurer to avoid: (i) an increase in Landlord's insurance premium (or Tenant shall pay for the increase in premium); or (ii) loss of insurance.
34. **WATERBEDS:** Tenant shall not use or have waterbeds on the Premises unless: (i) Tenant obtains a valid waterbed insurance policy; (ii) Tenant increases the security deposit in an amount equal to one-half of one month's Rent; and (iii) the bed conforms to the floor load capacity of Premises.
35. **WAIVER:** The waiver of any breach shall not be construed as a continuing waiver of the same or any subsequent breach.

Tenant's Initials ()

Landlord's Initials ()

Reviewed by Date 7-7-14

LR REVISED 12/13 (PAGE 4 OF 6)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 4 OF 6)



11223 Calle Oro Verde
Premises: Valley Center, CA 92082

Date: August 19, 2014

36. NOTICE: Notices may be served at the following address, or at any other location subsequently designated:

Landlord: Brenda Markstein

2702 Circle Drive

Newport Beach, CA 92663

Tenant: HiCaliber Horse Rescue, Inc.

11223 Calle Oro Verde

Valley Center, CA 92082

37. TENANT ESTOPPEL CERTIFICATE: Tenant shall execute and return a tenant estoppel certificate delivered to Tenant by Landlord or Landlord's agent within 3 days after its receipt. Failure to comply with this requirement shall be deemed Tenant's acknowledgment that the tenant estoppel certificate is true and correct, and may be relied upon by a lender or purchaser.

38. REPRESENTATION:

A. TENANT REPRESENTATION; OBLIGATIONS REGARDING OCCUPANTS; CREDIT: Tenant warrants that all statements in Tenant's rental application are accurate. Landlord requires all occupants 18 years of age or older and all emancipated minors to complete a lease rental application. Tenant acknowledges this requirement and agrees to notify Landlord when any occupant of the Premises reaches the age of 18 or becomes an emancipated minor. Tenant authorizes Landlord and Broker(s) to obtain Tenant's credit report periodically during the tenancy in connection with the modification or enforcement of this Agreement. Landlord may cancel this Agreement: (i) before occupancy begins; (ii) upon disapproval of the credit report(s); or (iii) at any time, upon discovering that information in Tenant's application is false. A negative credit report reflecting on Tenant's record may be submitted to a credit reporting agency if Tenant fails to fulfill the terms of payment and other obligations under this Agreement.

B. LANDLORD REPRESENTATIONS: Landlord warrants, that unless otherwise specified in writing, Landlord is unaware of (i) any recorded Notices of Default affecting the Premises; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

39. MEDIATION:

A. Consistent with paragraphs B and C below, Landlord and Tenant agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action.

B. The following matters are excluded from mediation: (i) an unlawful detainer action; (ii) the filing or enforcement of a mechanic's lien; and (iii) any matter within the jurisdiction of a probate, small claims or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation provision.

C. Landlord and Tenant agree to mediate disputes or claims involving Listing Agent, Leasing Agent or property manager ("Broker"). provided Broker shall have agreed to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to such Broker. Any election by Broker to participate in mediation shall not result in Broker being deemed a party to this Agreement.

40. ATTORNEY FEES: In any action or proceeding arising out of this Agreement, the prevailing party between Landlord and Tenant shall be entitled to reasonable attorney fees and costs, except as provided in paragraph 39A.

41. C.A.R. FORM: C.A.R. Form means the specific form referenced or another comparable form agreed to by the parties.

42. OTHER TERMS AND CONDITIONS; SUPPLEMENTS: ☐ Interpreter/Translator Agreement (C.A.R. Form ITA);
☐ Keysafe/Lockbox Addendum (C.A.R. Form KLA); ☐ Lead-Based Paint and Lead-Based Paint Hazards Disclosure (C.A.R. Form FLD);
☐ Landlord in Default Addendum (C.A.R. Form LID)

The following ATTACHED supplements are incorporated in this Agreement: Option Agreement; Addendum 1

43. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES: Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed except in writing. This Agreement is subject to California landlord-tenant law and shall incorporate all changes required by amendment or successors to such law. This Agreement and any supplement, addendum or modification, including any copy, may be signed in two or more counterparts, all of which shall constitute one and the same writing.

44. AGENCY:

A. CONFIRMATION: The following agency relationship(s) are hereby confirmed for this transaction:

Listing Agent: (Print firm name)

is the agent of (check one): ☐ the Landlord exclusively; or ☐ both the Landlord and Tenant.

Leasing Agent: (Print firm name)

(if not same as Listing Agent) is the agent of (check one): ☐ the Tenant exclusively; or ☐ the Landlord exclusively; or ☐ both the Tenant and Landlord.

B. DISCLOSURE: ☐ (If checked): The term of this lease exceeds one year. A disclosure regarding real estate agency relationships (C.A.R. Form AD) has been provided to Landlord and Tenant, who each acknowledge its receipt.

45. ☐ TENANT COMPENSATION TO BROKER: Upon execution of this Agreement, Tenant agrees to pay compensation to Broker as specified in a separate written agreement between Tenant and Broker.

Tenant's Initials

(Signature)

Landlord's Initials

(Signature)

Reviewed by

Date



LR REVISED 12/13 (PAGE 5 OF 6)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 5 OF 6)

11223 Calle Oro Verde
Premises: Valley Center, CA 92082

46. ☐ **INTERPRETER/TRANSLATOR:** The terms of this Agreement have been interpreted for Tenant into the following language: _____ Date: August 19, 2014
the attached interpreter/translator agreement (C.A.R. Form ITA). Landlord and Tenant acknowledge receipt of

47. **FOREIGN LANGUAGE NEGOTIATION:** If this Agreement has been negotiated by Landlord and Tenant primarily in Spanish, Chinese, Tagalog, Korean or Vietnamese, pursuant to the California Civil Code, Tenant shall be provided a translation of this Agreement in the language used for the negotiation.

48. **OWNER COMPENSATION TO BROKER:** Upon execution of this Agreement, Owner agrees to pay compensation to Broker as specified in a separate written agreement between Owner and Broker (C.A.R. Form LGA).

49. **RECEIPT:** If specified in paragraph 5, Landlord or Broker, acknowledges receipt of move-in funds.

Landlord and Tenant acknowledge and agree Brokers: (a) do not guarantee the condition of the Premises; (b) cannot verify representations made by others; (c) cannot provide legal or tax advice; (d) will not provide other advice or information that exceeds the knowledge, education or experience required to obtain a real estate license. Furthermore, if Brokers are not also acting as Landlord in this Agreement, Brokers: (e) do not decide what rental rate a Tenant should pay or Landlord should accept; and (f) do not decide upon the length or other terms of tenancy. Landlord and Tenant agree that they will seek legal, tax, insurance and other desired assistance from appropriate professionals.

Tenant agrees to rent the Premises on the above terms and conditions.

Tenant
Address 11223 Calle Oro Verde HiCaliberr Horse Rescue Inc. Date
Telephone (760) 443-9424 Fax City Valley Center State CA Zip 92082
E-mail hicalibercowgirl@yahoo.com
Tenant
Address City Date
Telephone Fax City Date
E-mail State Zip

☐ **GUARANTEE:** In consideration of the execution of this Agreement by and between Landlord and Tenant and for valuable consideration, receipt of which is hereby acknowledged, the undersigned ("Guarantor") does hereby: (i) guarantee unconditionally to Landlord and Landlord's agents, successors and assigns, the prompt payment of Rent or other sums that become due pursuant to this Agreement, including any and all court costs and attorney fees included in enforcing the Agreement; (ii) consent to any changes, modifications or alterations of any term in this Agreement agreed to by Landlord and Tenant; and (iii) waive any right to require Landlord and/or Landlord's agents to proceed against Tenant for any default occurring under this Agreement before seeking to enforce this Guarantee.

Guarantor (Print Name) _____
Guarantor _____
Address _____ Date _____
Telephone _____ Fax _____ City _____ State _____ Zip _____
E-mail _____

Landlord agrees to rent the Premises on the above terms and conditions.

Landlord Brenda Markstein Living Trust Date
Address 2702 Circle Drive, Newport Beach, CA 92663 Brenda Markstein Date
Telephone Fax E-mail

REAL ESTATE BROKERS:

A. Real estate brokers who are not also Landlord under this Agreement are not parties to the Agreement between Landlord and Tenant.

B. Agency relationships are confirmed in paragraph 44.

C. **COOPERATING BROKER COMPENSATION:** Listing Broker agrees to pay Cooperating Broker (Leasing Firm) and Cooperating Broker agrees to accept: (i) the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS; or (ii) ☐ (if checked) the amount specified in a separate written agreement between Listing Broker and Cooperating Broker.

Real Estate Broker (Listing Firm)
By (Agent) _____ BRE Lic. # _____ Date _____
Address _____ BRE Lic. # _____
Telephone _____ Fax _____ City _____ State _____ Zip _____
E-mail _____

Real Estate Broker (Leasing Firm)
By (Agent) _____ BRE Lic. # _____ Date _____
Address _____ BRE Lic. # _____
Telephone _____ Fax _____ City _____ State _____ Zip _____
E-mail _____

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LR REVISED 12/13 (PAGE 6 OF 6)

RESIDENTIAL LEASE OR MONTH-TO-MONTH RENTAL AGREEMENT (LR PAGE 6 OF 6)

Reviewed by _____ Date _____



Kristin Connor <kconnor@shorbconnor.com>

To: Brenda Markstein - MindFox <Brenda@MindFoxProductions.com>, "Michelle Knuttila" <hicalibercowgirl@yahoo.com>

Fwd: Addendum

August 30, 2014 12:12 PM

1 Attachment, 72 KB

Attached is the revised addendum.

Kristin L. Connor
SHORB & CONNOR, LLP
437 J Street
San Diego, CA 92101
Tel: (888) 222-1220
Dir: (619) 313-4515
Fax (858) 248-4402

Sent from my iPhone

Begin forwarded message:



CALIFORNIA
ASSOCIATION
OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 4/12)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Residential Purchase Agreement, ☐ Manufactured Home Purchase Agreement, ☐ Business Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Vacant Land Purchase Agreement, ☐ Residential Income Property Purchase Agreement, ☐ Commercial Property Purchase Agreement, ☐ Other

dated August 19, 2014, on property known as 11223 Calle Oro Verde
Valley Center, CA 92082

in which HICALIBER HORSE RESCUE INC., a California Corporation is referred to as ("Buyer/Tenant")
and BRENDA MARKSTEIN LIVING TRUST is referred to as ("Seller/Landlord").

1) In addition to the base rent of \$4500 per month, Tenant will pay \$500 per month for the use of the tractor on the premises. This payment is effective October 1, 2014.

2) Landlords two horses, Carly Girl, a Peruvian Paso mare, and Macho, an Andalusian gelding, will remain on the Premises and be cared for by Lessee. Caring for involves the horses remaining in their current stalls, turnouts, feeding, watering, mucking and day to day care as needed (ie, brushing, fly spray, etc.) Landlord is responsible for all costs related to the horses, including but not limited to cost of food, farrier work, worming and vet care.

3) Michelle Knuttila and her two minor children may move onto the Premises effective September 1, 2014. Rent for the month of September 2014 shall be \$2500.00.

4) Lessee shall keep an insurance policy in full force and effect at all times during the lease, adding Lessor as additional insured. This policy shall cover injury occurring on the Property, or any organized horse rides. Lessor may request copies of the policy to ensure that it is in effect.

5) Lessee expressly understands that there is no additional fencing around any of the water ponds/pools at the Property.

6) A list of the furnishings that are to remain at the property will be signed by both Lessor and Lessee at the time of entering into the lease.

7) Lessee shall have a minimum of \$10,000 in escrow as a down payment by the end of the first twelve months of the lease. This shall be nonrefundable if Lessor fails to exercise their Option to purchase the property in lieu of a security deposit. Additionally, 10% of any additional down payment shall be non-refundable if Lessee fails to exercise their Option.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date

Date

Buyer/Tenant

Seller/Landlord

HICALIBER HORSE RESCUE INC.

BRENDA MARKSTEIN LIVING TRUST

Buyer/Tenant

Seller/Landlord

a California Corporation